$57.50 (Fifty Seven Dollars and Fifty Cents) per month from June 30, 1921, or from any other date for the reason that on July 20, 1920, the said insured by written request cancelled said contract of insurance and paid no premiums thereon after July 1920, and said contract lapsed and became of no force and effect after midnight of August 31, 1920.

V

The defendant denies that the said Benson Charles Williams paid any premiums on said contract of insurance after the premium for the month of July 1920, and denies that any premiums were paid for or on behalf of said contract, and denies that said contract matured on June 30, 1921, or at any other date.

VI

The defendant alleges that the only claim for insurance benefits under this contract was received in the Veterans' Administration July 3, 1931. That the claim was denied by the Administrator of Veterans' Affairs November 5, 1932, and a letter notifying the claimant of this fact mailed out on the same day. The defendant further admits and alleges that said denial was received by the plaintiff herein November 7, 1932, and that by reason of these facts said law suit is barred under the Statute of limitations, not having been timely filed.

7 Wherefore, defendant prays that judgment be entered for the defendant and against the plaintiff, with costs.

Dwight H. Green,
DWIGHT H. GREEN,
United States Attorney.
By: Edward Sullivan,
EDMOND SULLIVAN,
Assistant United States Attorney.
Frederick H. Maughner,
FREDERIC H. MAUGHMER,
Attorney, Department of Justice.

IN UNITED STATES DISTRICT COURT

Reply

Filed May 13, 1935

First Paragraph of Reply

Comes now the plaintiff in the above entitled cause and for first paragraph of reply to defendant's answer filed herein denies each and every allegation therein contained, which controverts or tends to controvert any of the material allegations in plaintiff's declaration contained.

FRANK C. WADE,
WM. J. DOYLE,
Attorney for Plaintiff.

Second Paragraph of Reply

Comes now the plaintiff and for her second paragraph of reply to defendant's answer and alleges that at the time of the enlistment of said insured and the execution of the insurance contract herein involved said insured was an infant under the age of twenty-one (21) years, and that said defendant required said plaintiff herein as mother of said infant to sign a release and written consent for said enlistment and *and* that said release or written consent had a provision therein that in consideration of said plaintiff executing said
8 written release and consent, the said defendant herein would issue to said insured a certificate of war risk insurance, payable to said plaintiff, extending through the period of said enlistment or until said insured became twenty-one (21) years of age. That he became and was a party to said insurance contract and that said pretended cancellation of said insurance as alleged in said answer without notice to plaintiff was void and of no force and effect.

Plaintiff further alleges that at the time of said enlistment and the issuance of said insurance said insured executed and delivered to said defendant written authority to deduct from his pay or any other moneys due him, premiums on said insurance as the same became due, and that at all times during said enlistment and after said pretended cancellation of said insurance there was due and owing from said defendant to said insured, over and above all legal credits, set-offs, or counter-claims, a sufficient sum of money to pay all premiums due upon said insurance as the same became due, and that by reason thereof said insurance remains in full force and effect until the death of said insured.

Plaintiff further alleges that immediately upon the notice of said pretended cancellation she rescinded the same and notified said defendant of said recision and offered and tendered to pay to said defendant any and all premiums that might be due thereon.

Plaintiff further alleges that she now tenders unto the Court any and all premiums that may be due on said contract of insurance.

Wherefore, Plaintiff prays for judgment as per said declaration.

FRANK C. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

Third Paragraph of Reply

Comes now the plaintiff and for her third paragraph of reply to defendant's answer alleges and shows to the Court that at the time of said pretended cancellation of said insurance as set out in said answer, the said insured was an infant, that said insurance was a necessity for said insured, and that said pretended cancellation thereon was against the interest of said infant and was there-
9 fore void. That because said insured was an infant said contract cancelling said insurance was voidable, subject to being

avoided by said infant during his life time and in the case of his death before he reached his majority was subject to recision by his personal representatives. That said plaintiff herein is the personal representative and heir of said insured, who died before he reached his majority and that as soon as said plaintiff herein was informed of said contract cancelling said insurance, she, as beneficiary and personal representative of said deceased infant, rescinded said contract, cancelling said insurance and notified said defendant of the same, and tendered and offered to pay all premiums that may have been due on said insurance and that as said beneficiary and personal representative of said deceased infant, she now offers to pay and tender unto Court any and all premiums that may have been due on said insurance contract at the time of the death of said insured, together with interest thereon.

Plaintiff further alleges that at all times after said pretended cancellation of said insurance set out in said answer there was due and owing from said defendant to said plaintiff uncollected pay in an amount in excess of any and all premiums that thereafter became due before the death of said insured and that at the time of the issuance of said insurance the said insured gave written authority for the deduction of said premiums from his pay or from any other moneys due him for the payment of his premiums as they became due and therefore said insurance remained in full force and effect until the death of said insured.

Wherefore, Plaintiff prays for judgment as per said declaration.

FRANK C. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

10 In United States District Court

Judgment

Entered Oct. 11, 1935

Now the issues herein joined, having been submitted to the Court, and the Court having duly considered such issues, doth file herein its findings of fact and conclusions of law, finding said issues in favor of the plaintiff and against the defendant.

It is, therefore, on this October 11th, 1935, Ordered, Adjudged, and Decreed, that plaintiff, Angie Crook Williams, have and recover from the defendant, the United States of America, the sum of $57.50 per month, from and after June 30, 1921, for a period of 240 months, and that defendant, the United States of America, deduct from the aforesaid, the sum of ten percent thereof and pay one-half of the same to Frank C. Wade, of Terra Haute, Indiana, and one-half

to W. J. Doyle, for their services as attorneys for said plaintiff in said cause.

PHILIP L. SULLIVAN,
United States District Judge,
for the Northern District of Illinois.

Dated this 11 day of October 1935.

To the entry of which judgment the defendant objects and excepts.

Notice waived:

M. L. IGOE
(E. S.)

11 In United States District Court

Findings of fact and conclusions of law

Filed Oct. 11, 1935

On this 11th day of Oct., 1935, the above-entitled cause coming on to be heard before the Court, the parties appearing by their respective counsel, a jury having been waived, and the Court being fully advised in the premises, makes the following findings of fact and conclusions of law.

Findings of fact

I

The plaintiff, Angie Crook Williams, is and was at the time of filing this action, a resident of the northern district of Illinois.

II

As beneficiary of said insurance, the plaintiff filed claim for said insurance in 1921. The defendant rendered final rejection of said claim on November 5, 1932, which was received by plaintiff in Chicago on November 8, 1932, and suit was filed herein on November 9, 1932.

III

The insured, Benson Charles Williams, was born on the 27th day of August, 1901, and Angie Crook Williams, plaintiff herein, is the mother and R. E. Williams, her husband, is the father of said insured.

IV

On the 13th day of January 1919, the said Benson Charles Williams enlisted in the United States Navy for the period of his minority.

V

On the 13th day of January 1919, there was issued to said Benson Charles Williams, who was then in the military service of the
12 United States, $10,000.00 War Risk Insurance, sued upon herein, in which the plaintiff, Angie Crook Williams, was named beneficiary.

VI

At the time of the issue of said insurance, the said Benson Charles Williams executed a written request that the premiums be deducted from his pay each month during said enlistment, and, in compliance with said written request, the said monthly premiums were deducted each month after January 13, 1919, up to and including the month of July 1920, but no premiums were deducted thereafter.

VII

At the time of said enlistment, the plaintiff Angie Crook Williams, mother, and R. E. Williams, father of the said Benson Charles Williams, executed a release and waiver or consent of parents, consenting to said enlistment and releasing their claim to his pay during said enlistment, thereby ratifying and approving of all said transactions. The said consent executed by said parents contained a typewritten clause providing that said consent was executed on condition that the said Benson Charles Williams carry War Risk Insurance in the sum of $10,000.00 in behalf of his mother, the plaintiff, during said enlistment. That in open court counsel for plaintiff called upon counsel for defendant to produce the enlistment documents relative to the enlistment of Charles Benson Williams in default whereof oral testimony was received to the effect that, and the court finds as a fact, the matters set forth in paragraph VII.

VIII

On July 20, 1920, the veteran, Benson Charles Williams, executed a document reading as follows:

"I hereby request that my insurance be reduced from $10,000.00 to none Dollars.

"(Signed) BENSON CHARLES WILLIAMS.

"Witness to signature,
"E. D. SOUTHWORTH,
"*Lieut. U. S. N. R. F.*"

13 IX

In compliance with said instrument executed by the said Benson Charles Williams, on the 20th day of July 1920 said defendant ceased

to deduct the monthly premiums from the monthly pay of the said Benson Charles Williams, but at all times thereafter, up to and including the month of June 1921, the said Benson Charles Williams had more pay due him than the amount of all premiums due on said insurance.

X

The said Benson Charles Williams died on the 30th day of June 1921.

XI

Immediately upon notice of the death of the insured, the plaintiff herein, as beneficiary of said insurance, in 1921, made written demand upon defendant for the payment of said insurance.

XII

Upon receipt of said demand and claim for said insurance the defendant notified plaintiff of said instrument executed by insured on July 20, 1920, above set out. That immediately upon receipt of said information said plaintiff rescinded said pretended cancellation of said insurance, offered to pay any and all premiums that may have been due thereon, and reiterated her claims as beneficiary for the payment of said insurance.

XIII

That Frank C. Wade of Terre Haute, Indiana, and W. J. Doyle of Chicago, Illinois, have performed legal services for plaintiff in the prosecution of her suit of the reasonable value of ten per cent of all payments to be made on said certificate.

Thereupon the court makes the following Conclusions of Law:

14 *Conclusions of law*

1. The Court has jurisdiction of this case under Section 19 of the War Risk Insurance Act.

2. At the time of the death of the said Benson Charles Williams, said War Risk Insurance in the sum of $10,000.00, wherein the plaintiff herein, Angie Crook Williams, was beneficiary, was in full force and effect.

3. That by the terms of said insurance, the defendant became and is indebted to the plaintiff in the sum of $57.50 per month for each and every month for a period of 240 months, beginning in the month of July 1921.

4. That there is due Frank C. Wade of Terre Haute, Indiana, and William J. Doyle of Chicago, Illinois, ten percentum of said monthly

payments for their legal services rendered plaintiff in the prosecution of this case.

Approved this 11 day of October 1935.

PHILIP L. SULLIVAN,
Judge, United States District Court
for the Northern District of Illinois.

To the actions and finding of the Court the defendant objects and excepts.

Notice received:

M. L. IGOE,
E. S.

In United States District Court

Bill of exceptions

Filed March 11, 1936

Be it remembered that the above entitled cause came on for trial on the eighth day of July 1935 before the Honorable Philip L. Sullivan, District Judge, without a jury, on the trial of the
15 merits, the parties having by stipulation in writing filed therein, waived a trial of the issues by the jury and submitted the same to the court for trial, the parties being represented by counsel as follows: William J. Doyle and Frank C. Wade, attorneys for the plaintiff; Edmond Sullivan, Assistant United States Attorney, for the defendant. Whereupon the following occurred, and the plaintiff, to maintain the issues on his part, introduced the following evidence:

Stipulation of Facts

It was stipulated and agreed by the parties to the said cause as follows:

That Benson Charles Williams was born August 27, 1901. Benson Charles Williams enlisted in the United States Navy January 13, 1919; Benson Charles Williams served continuously thereafter in the United States Navy up to and including March 25, 1921, when he, a member of the crew of the U. S. S. "Connestoga", left San Francisco, California, for Pearl Harbor, Hawaii, enroute to Samoa, and that since said date the ship, crew, and officers have never been heard of; that on July 22, 1921, the United States Navy Department declared the ship lost with all aboard, and all officers and members of the crew of the U. S. S. "Connestoga", Benson Charles Williams, were declared officially dead as of June 30, 1931.

That on January 13, 1919, the veteran, Benson Charles Williams, applied for and there was issued to him a contract of war risk term insurance in the principal sum of $10,000; that Angie Crook Williams, the plaintiff herein, and described in the application for insurance as mother of the insured, was designated beneficiary under said

insurance contract; that on July 20, 1920, the veteran, Benson Charles Williams, executed a document reading as follows:

"I hereby request that my insurance be reduced from ten thousand dollars to None dollars."

—signed by the veteran Insured, Benson Charles Williams, the signature being witnessed by Lieutenant C. Southward.

That on July 21, 1920, the United States Navy Department discontinued the insurance of the veteran on their pay roll and collected no premiums on the said insurance contract after the premium for the month of July 1920; that premiums on the said insurance contract were paid from the date of the application therefor up to and including the premium for the ninth of July 1920, and that the disbursing officer of the pay corps of the United States Navy on July 20, 1920, notified the war risk division that the checkage of premiums on the monthly payroll of Benson Charles Williams had been
16 discontinued and that the date of the last checkage of premiums was July 1920.

That the records of the Veterans' Administration do not disclose whether or not any wages were paid to the veteran Benson Charles Williams covering any period of time after April 12, 1921. The records of the naval department and the Veterans' Administration file do not disclose that the veteran ever enlisted a second time, but was rather serving on his first enlistment at the time he was lost.

ROY W. JOHNS, called as a witness on behalf of the plaintiff, being first duly sworn in the above entitled cause, testified as follows:

Roy W. Johns lives at 10410 South Hoyne Street, Chicago, Illinois; is a lawyer connected with the legal department of Swift & Company; has known Mrs. Williams, the plaintiff, and her husband approximately 20 years; remembers some papers in connection with Mr. and Mrs. Williams giving their consent to the enlistment of their son, Benson, at the time of his joining the Navy; was a close friend of Benson Williams; was 16 or 17 years old at the time.

Whereupon the defendant by his counsel objected to the testimony of the witness, Roy W. Johns, wherein it was offered to be proved by him of the contents of an alleged consent of an alleged declaration and agreement made between the plaintiff and a recruiting officer. The objection was based on the ground that the alleged written contract would be the best evidence for the further reason that it was immaterial and incompetent since no agent or employee had authority to bind the United States Government by any such alleged contract even if proved, which objections was overruled, to which ruling of the court the defendant then and there duly accepted.

Q. Have you got any information with reference to their giving their consent to the enlistment of their son Benson at the time of his joining the Navy?

A. I have.

Q. I wonder if you will tell the circumstances to the Court.

The COURT. Where was it?

A. In Chicago.

The COURT. I know, but where?

A. At the time the papers were signed.

17 The COURT. Yes.

A. May I explain this. Benson and I were very close friends.

The COURT. The deceased?

A. The deceased and I were very close friends, and had been friends for four or five years prior to this.

The COURT. How old were you?

A. Sixteen and seventeen. I would be seventeen and he would be eighteen the following March when he joined.

Mr. MAUGHMER. For the purpose of the record, I would like to say we should have the consent declaration for the reason that that is not the best evidence, and for the further reason that it is immaterial for the purpose of this lawsuit since no agent, no employe, no individual has any authority to bind the government, and any such——

The COURT (Interposing). It becomes the best evidence if he served notice. He may go ahead.

(To which ruling of the court the defendant then and there duly excepted.)

The WITNESS. Benson joined the Red Cross camp, but being too young and not eligible, he was mustered out of the Red Cross. Shortly after he returned, he worked in the post office as a substitute clerk. Shortly after he came to me and said he wanted to join the navy. Then he went down to a recruiting officer and attempted to enlist. He said as he was under eighteen years of age, it would be necessary to have his parents' consent. If over eighteen, he could have joined without the parents' consent. I was in the Williams' home practically every day in the week, and Benson came in my home; we were constantly back and forth. The day he brought home the papers, the parents talked with him about joining, they didn't want him to join. He begged to be permitted to join, and finally they said they would consent, after looking over the papers. Well, I was in the home. That evening, there was present Mr. Williams, Mrs. Williams, Benson, and myself, just the family and myself. There were a number of papers there—it was sixteen years ago and some impressions are not just clear. I do recall very distinctly one of the documents was that Benson joined the navy to stay there until he reached his twenty-first birthday. The recruiting officer told him it was necessary for him to have the consent of his parents and it would be necessary for him to apply for and have war risk insurance. We left the Williams house and we

18 went down to a notary public, I recall it was in the seventy-five hundred block on Eggleston; at that time they were living at 7623, south side of Chicago. Mr. Brown read the paper over, or maybe twice he read the papers over, and I recall making the statement I was only sixteen and was not particularly interested in it.

Mr. DOYLE. Do you recall him making any statements, Mr. Johns?

A. He said, "Well, Benson, you will have to take out insurance with this thing, that will cut down your pay, Benson", which fact would probably affect him, of course.

Q. It was the understanding of what was concerned, that the boy must take out insurance and must sign consent.

A. Yes, that was in one document, I do recall that the consent signed by the two Williams, both mother and father, provided that the boy was to be enlisted for the period of minority and in addition, he had to take out war risk insurance, payable to one of the parents, and he made it payable to his mother. I recall the enlistment of Benson Williams as we were still in a state of war, and he joined the navy under certain conditions, that was before the Armistice and we were technically still in a state of war with Germany. It was my understanding at the time. I recall Mr. Williams asking the question with reference to the insurance, as they had an investment in the boy and the boy ought to be insured. The boy accepted the document calling for that insurance, he was required to take out insurance in connection with his enlistment. If it was actually required, I don't know.

Q. How many pages in that paper?

A. I don't recall if more than one page or not, Mr. Doyle.

Q. You have the recollection it provided that ten thousand dollars insurance would be carried during enlistment?

A. Yes.

Q. It was on the document?

A. Yes.

Q. Which bore their signature?

A. Yes; as near as I can remember.

CROSS-EXAMINATION

The provision for the ten thousand dollars insurance was on the printed form; doesn't remember whether the provision, however, was printed or written across the form; didn't see it at the recruiting office; didn't see it at any office of the government; didn't know
19 where it came from at all; doesn't know whether it was sent to any government office at all except that Benson told him that he took it to the recruiting office.

Mr. SULLIVAN. May I ask first a question. I understood—correct me if I am wrong—a few moments ago, on direct examination, it was my understanding that you knew what was on that paper was what the notary public said, "Benson, you will have to keep ten thousand dollars insurance." Did you actually read it yourself on the papers?

A. On three occasions that question arose. In the first place, it was when Benson spoke to me before he showed the papers to his parents, and told me—at that time, I did not look at the papers—he told me that he had to take out ten thousand dollars insurance as part of the enlistment in order to get his parents' consent, that he had to enlist until he was twenty-one, and he had to agree that he would not buy out of the service during the period of his enlistment.

The second time was in the kitchen and later in the dining room, and the papers were looked over. Mr. Williams looked at them before we went to the notary public, and at that time discussed that. I can't recall all of it, but the papers were read by all of us. It was sixteen years ago. But I do recall that at that time he discussed the question, it was discussed, and I was there when it was discussed.

And the third time was at the notary public's office. It was reiterated three times.

Didn't read it at the notary public's office; has a distinct recollection of reading parts of the papers in the Williams' kitchen; has a distinct recollection of reading something about war risk insurance; can't remember exactly what it said.

ROLAND E. WILLIAMS, called as a witness on behalf of the plaintiff, having first been duly sworn, testified as follows, to wit:

Roland E. Williams lives at 7414 Emerald Avenue, Chicago; is a husband of the plaintiff; after being notified of the death of Benson Williams, went to the Veterans' Bureau at State and Van Buren Streets on the eighth floor; was given a blank form to fill out to file for insurance; that was in the latter part of July 1921. Plaintiff's Exhibit One is a copy of the letter mailed to him from the Veteran's Bureau at Van Buren and State acknowledging receipt of the filed claim. Plaintiff's Exhibit Two is a letter from the Honorable Senator James Hamilton Lewis.

Plaintiff's Exhibit Three came to him and his wife through the mails. Plaintiff's Exhibit Four came to him and his wife through the mails. Plaintiff's Exhibit Five came to him and his wife through the mails. Plaintiff's Exhibit Six comes from the files of the United States Veterans' Bureau.

After filing this claim wrote to Congressman Elliott W. Scroll. Kept continually trying to get information regarding the claim; finally got a ruling November 1932; wrote the auditor of the navy regarding money that might have been due the veteran at the time of his death; the auditor sent forms to be filled out which he and Mrs. Williams filled out and sent back to Washington; about eighty dollars was sent to Mr. Williams; this claim was paid up to April 12, 1921; this eighty dollars covered the period of pay from the time the boat disappeared until April 12, 1921.

Benson Williams was 17 at the time of enlistment. Witness and plaintiff executed a consent at the time of the veteran's enlistment; does not have a copy of the release or consent; there was some written matter on that consent at the time of his enlistment other than the printed matter.

Q. Was there anything written in that consent or waiver at the time of his enlistment other than what was printed on there?

A. There was.

Q. Tell the Court what that was.

Mr. SULLIVAN. I object to that, your Honor. I don't know by whom it was written, and if it was written by either Mr. Williams,

or by a recruiting sergeant, he was utterly without authority to do so, and the United States can not be bound by his unlawful act unless he shows some authority to bind us by that.

Mr. WADE. I think that will be a legal question, and I would like the record to show that was done. They may have some grounds and contrary to the regulations, and might not be bound by it, but I think it should be shown.

The COURT. I think I will permit it without ruling on it.

Mr. SULLIVAN. Exception.

(To which ruling of the Court, the defendant, by counsel, then and there duly excepted.)

21 The substance of the written matter on the consent form was that ten thousand dollars of war risk insurance was to be carried during the period of enlistment, naming Angie C. Williams as beneficiary; doesn't know who wrote that in there; it was typewritten; it was written on there at the time the consent was signed. First received information that the insured cancelled his insurance from B. Frazier at the time the claim was filed. The typewritten clause regarding the insurance was put in the consent because the plaintiff and he refused to sign it unless it carried the clause. After finding out that there was a cancellation, claim was filed immediately. That was the first he knew of the cancellation. At the time this consent was signed the plaintiff's son, Benson, and Roy Johns and himself were present.

Cross-Examination

At the time the consent was signed the typewritten provision was already written across the face of the consent. His sone, Benson, was the person who submitted this consent document for his signature; his son Benson, the veteran, brought it home to him; then they went over to a notary public and had it notarized, and after it was signed and notarized it was turned over to the veteran; then the parents went home. Shortly after, a day or so, the son left to go into the navy, and when he left he took the paper with him, and that was the last ever seen of that paper; doesn't know whether his son turned that paper in to the navy authorities or not; but he knows he did enlist; doesn't know whether the son filed that paper with the authorities or not; didn't see him do it.

Redirect Examination

Never signed any other consent or waiver except this one with the clause "providing for insurance."

In open Court Plaintiff requested defendant to produce the original consent signed by parents to enlistment of insured and defendant's counsel states such has been made in the records of Navy Department and that said consent cannot be found nor can the form used by found.

22 ANGIE CROOK WILLIAMS, the plaintiff, called as a witness on her own behalf, being first duly sworn, testified as follows:

Angie Crook Williams is the plaintiff; lives at 7414 Emerald Avenue, Chicago; is a mother of the insured; beneficiary under his policy; the insured was born August 27, 1901; recalls the time of his enlistment in the United States navy; signed papers, signed enlistment papers with an insurance clause; never at any time consented to the cancellation of the insurance; there was a time when the government claimed there was a cancellation; notified the government that they had never consented to any cancellation; had been working constantly ever since to get the insurance paid; at the time the consent for enlistment was signed with the typewritten clause on it, Mr. Williams, Roy Johns, Benson, and herself were present. That was before the enlistment. There were no other papers or consents signed.

And thereupon there was offered and received in evidence Plaintiff's Exhibit Number One, to which action of the Court in admitting into the evidence the said documents the defendant then and there objected and duly excepted.

Plaintiff's Exhibit One is summarized in words and figures as follows, to wit:

Plaintiff's Exhibit 1

Referred to Mrs. Williams with the Request That Form 527 Be Sent to This Office.

E. V. DICKSON.
AUG. 27, 1921.

C–707739 Benson C. Williams, G. M. 3/c U. S. N. JFO'H-ec-12-d

Mr. E. V. DICKSON,
8th Floor, Leiter Bldg.,
Chicago, Illinois.

DEAR MR. DICKSON: This office acknowledges receipt of your communication of August 4, 1921, submitting executed forms in support of the insurance claim of Mr. Benson C. Williams, formerly G. M. 3/c U. S. Navy who died June 30, 1921.

23 You are informed that under date of August 4, 1921, a communication was forwarded to Mrs. Angie Williams, the mother of the deceased sailor informing her that insurance formerly held by her son lapsed on August 2, 1920, on account of his failure to pay premiums. On the second enlistment the deceased sailor did not reestablish his insurance. Therefore, it was not in force at the time of his death.

Our form #527 application for compensation on account of dependency was forwarded to the mother of the decedent requesting her to submit proof of dependency if she so desires. This award will amount to $20 per month effective as of July 1, 1921, provided the necessary proof of dependency is established.

All future correspondence should bear the soldier's full name, rank, and organization, as well as our file number C–707739.

Assistant Director.

And thereupon there was offered and received in evidence Plaintiff's Exhibit Two.

Respectfully,

LEON FRASER,

Plaintiff's Exhibit Two is summarized in words and figures as follows, to wit:

Plaintiff's Exhibit Two

VETERANS ADMINISTRATION,
Washington, May 20, 1932.

In reply Refer To: FDB. Your File Reference: Williams, Benson C. XC–707 739.

Honorable J. HAMILTON LEWIS,
United States Senate,
Washington, D. C.

MY DEAR SENATOR LEWIS: This is in reply to your letter of May 13, 1932, relative to the claim for benefits under the Yearly Renewable Term Insurance of Benson C. Williams, now deceased.

No letter of disagreement can be issued until the claim has been thoroughly reviewed by the insurance Claims Council, and before submitting the claim to the Council a request is being forwarded to the Navy Department with a view to clarifying the seeming conflict between the information furnished your office and the records of this Administration.

24 As soon as a response is received from the Navy Department you will be further advised.

A copy of this communication is enclosed for your use.

Respectfully,

Harold W. Breining,
(Signed) HAROLD W. BREINING,
Assistant Administrator.

Encl.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 3, which is substantially as follows: to wit–:

Plaintiff's Exhibit 3

TREASURY DEPARTMENT,
BUREAU OF WAR RISK INSURANCE,
Washington, October 25, 1921.

In reply refer to: C–707739 Benson Charles Williams, U. S. N. JTD/sm–12.

Honorable ELLIOTT W. SPROUL,
House of Representatives,
Washington, D. C.

DEAR MR. SPROUL: Replying to your favor of October 20, 1931, making inquiry regarding the above captioned deceased seaman, you

are advised that the records of the Bureau show that Mr. Williams was declared dead since June 30, 1921, and that there was no Government Insurance in force at the time of his death.

The decedent held Government Insurance policy in the amount of $10,000.00 on his first enlistment. The records show his first discharge to be July 21, 1920, but his policy lapsed on October 2, 1920 on account of his failure to pay premiums. On his second enlistment the deceased sailor did not re-establish insurance and, therefore, same was not in force at the time of his death. For this reason, the mother who was designated as beneficiary in the policy will not be entitled to payments from the Bureau, but I shall be pleased to give further consideration to any claim she may make for compensation, provided she was dependent in whole or in part upon her son for support.

On August 27th, the proper forms were dispatched to be executed and returned to the Bureau by the parents, but to date same have not been received. As soon as this evidence is furnished, as stated above, I shall be pleased to give further consideration to this claim.

All future correspondence relative to this case should bear the file No. C-707739.

Very truly yours,

(Signed) C. R. FORBES,
Director, United States Veterans' Bureau.

Enc. (2).

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 4, which is substantially as follows, to-wit:

Plaintiff's Exhibit 4

VETERANS ADMINISTRATION,
Washington, April 21, 1932.

In reply refer to: FDB Your file Reference: Williams, Benson C. XC-707 739.

Honorable J. HAMILTON LEWIS,
United States Senate,
Washington, D. C.

MY DEAR SENATOR LEWIS: Receipt is acknowledged of your communication of April 1, 1932, relative to the claim for insurance benefits in the case of the above named veteran.

The records of this office indicate that the veteran applied for $10,000 insurance which was cancelled by his request July 21, 1920, thereby causing the insurance to lapse for nonpayment of the premium due October 1, 1920.

The Navy Department is being requested to furnish a complete checkage of the insurance to determine the status of the insurance at the time of the veteran's death.

It further appears that at the time the veteran died, he was serving in his first enlistment.

A copy of this communication is enclosed for your use.

Respectfully,

(Signed) HAROLD W. BREINING,
Assistant Administrator.

Encl. 1.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

26 And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 5, which is substantially as follows to-wit:

Plaintiff's Exhibit 5

VETERANS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,
Washington, November 5, 1932.

Williams, Benson C. XC-707 739.
Mrs. ANGIE C. WILLIAMS,
7453 Stewart Avenue,
Chicago, Illinois.

DEAR MADAM: Please be advised that your claim for insurance has been denied since the evidence on file shows that the service man requested a cancellation of his insurance on July 20, 1920, and no premium was deducted subsequent to this request, so there was no insurance in force at the time of his death on June 30, 1921.

You may consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended.

Respectfully,

(Signed) FRANK T. HINES,
Administrator.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon there was offered and received on behalf of the plaintiff, Plaintiff's Exhibit 6, which is summarized in the words and figures as follows:

Plaintiff's Exhibit 6

Treasury Department Form 514.

Affidavit in Support of Insurance Claim

I, Angie Crook Williams, residing at 7623 Eggleston Ave., Chicago, Illinois, believe myself to be entitled to receive the monthly payments of insurance granted by the United States to Benson Charles Williams, who died on the 30th day of June 1921.

27 I do solemnly swear that the foregoing statements are true to the best of my knowledge and belief.

(Signed) ANGIE CROOK WILLIAMS.

Subscribed and sworn to August 3, 1921.

To the receipt in evidence of which the defendant by its counsel then and there duly objected and excepted.

And thereupon the plaintiff rested her case in chief.

Motion to strike

And thereupon at the conclusion of the case offered for and on behalf of the plaintiff, the defendant, by its counsel, moved the Court to strike out all testimony in regard to the typewritten words superimposed on the form of the navy department used at the time of the enlistment of the veteran to gain the consent of the parents of a minor enlisting in the navy, on the grounds that there was no showing that it was put there by anyone connected with the navy department, no showing that it was a provision used by the navy department at that time; no showing that such a provision or agreement was authorized by an act of Congress, or any valid regulations of the navy department which motion was denied by the Court, to which action of the court in denying said motion, the defendant then and there duly excepted. Thereupon the defendant moved the court to make the following findings of fact and conclusions at law:

Defendant's requested findings and conclusions

1. That no claims of insurance benefits was filed by the beneficiary before July 3, 1931.

2. That before the death of Benson Charles Williams, the policy holder, and, on July 20, 1920, the said Benson Charles Williams requested the navy department to reduce his contract of war risk insurance in the sum of ten thousand dollars, which was in force up to that date, to none, which in law would amount to a cancellation.

3. That there were no valid and lawful provision compelling the carrying of war risk insurance by the United States for the benefit of Benson Charles Williams; that the government would not be obligated to keep a contract of ten thousand dollars war risk insurance in force during the period of his minority, or during the period of enlistment of Benson Charles Williams.

4. That such an agreement or such a provision, if such existed would not be binding upon the United States Government.

5. Asked the Court to find that it is without jurisdiction to
28 hear the cause, because no contract of insurance was in force and because under the provisions of section 445 of Title 38, United States Code, the Court is without jurisdiction because suit was filed too late.

6. Asked the Court to find that if a claim was filed on or about August 21, that thereafter on October 25, 1921, C. R. Forbes, Director of the United States Veterans Bureau, denied that claim as shown by Plaintiff's Exhibit Number Three, and that therefore the Court is without jurisdiction under section 19 of the World War Veterans Act, because suit was filed more than six years after the accrual of the cause of action, upon which the suit was based.

Whereupon the Court denied the request of the defendant, to which action of the Court in denying the said motion and request of the defendant, the defendant then and there duly excepted.

And thereupon the defendant to maintain the issues on its part, offered the following evidence, to wit:

And thereupon there was offered and received Government's Exhibit Number One, which is summarized in the words and figures as follows, to wit:

Government Exhibit 1

This continuance of insurance premium "I hereby request that my insurance be reduced from ten thousand dollars to none dollars", signed Benson Charles Williams. Witness to signature T. D. Southworth Lieutenant U. S. Sub. Chaser Number 305, dated July 20, 1920. From disbursing officer; to Bureau of War Risk Insurance (Insurance Division), Treasury Department, Washington, D. C. Subject: Discontinuance of Insurance Premium. You are hereby notified that the term insurance premium of the below-named man has been discontinued on my pay roll. Date of last checkage of premium July, 1920. Cause of discontinuance, request of applicant. Signed, Joseph A. Cossairt, Acting Pay Clerk, United States Navy.

And thereupon there was offered and received in evidence Government Exhibit Number Three, certified and authenticated under the hand and seal of the Secretary of the Navy, which said Government Exhibit Three is summarized in the words and figures as follows, to wit:

Government Exhibit 3

The records of the Bureau show that Benson Charles Williams enlisted in the United States Navy January 13, 1919, at the
29 navy recruiting station, Chicago, Illinois, as apprentice seaman to serve during minority until August 26, 1922; stated that he was born at Columbus, Ohio, August 27, 1901. Named his mother, Angie Crook Williams, 7623 Eggleston Avenue as next of kin at date of enlistment; was transferred to the navy training station, Great Lake, Illinois, January 13, 1919; to the naval training camp, Mare Island, California, April 7, 1919; to the Receiving Ship at Mare Island, California, June 30, 1919; to the U. S. S. C. #305, July 17, 1919; was rated seaman second class, July 17, 1919; seaman, January 15, 1920; gunner's mate third class, June 1, 1920; transferred to the U. S. S. "Conestoga", January 13, 1921; and died June

30, 1921, as gunner's mate third class. At the time of death, Williams was a member of the crew in the ill-fated U. S. S. "Conestoga" which sailed from Mare Island, California, March 25, 1921, enroute to Samoa, via Pearl Harbor, Territory of Hawaii.

Form N. Nav. 235, executed by Williams at the Navy Mobilization Station, Chicago, Illinois, January 13, 1919, shows record of insurance in the amount of $10,000.00, in favor of Angie Crook Williams, mother, 7623 Eggleston Avenue, Chicago, Illinois.

Consent, declaration, and oath of parent to enlistment in the Navy is not on file.

And thereupon there was offered and received in evidence Government's Exhibit Two, which is summarized in the words and figures as follows, to wit:

Government Exhibit 2

The United States Veterans' Bureau on Form 579. Claim For Insurance—Permanent Total Disability. I, Roland D. Williams, believe myself to be entitled to receive the monthly payments of insurance granted by the United States to me under certificate or policy number ---------, on account of permanent total disability resulting from Lost At Sea. Date disability began, June 30, 1921. Signed by Roland D. Williams, Claimant, father of the deceased. Subscribed and sworn to by him on the first day of July 1931 before L. R. Benston, Notary Public; received and filed in the United States Veterans' Bureau on July 3, 1931, and thereupon there was received in evidence Government's Exhibit Three-A, which is summarized in the words and figures as follows, to wit:

30 *Government Exhibit 3–A*

NOVEMBER 5, 1932.

To MRS. ANGIE C. WILLIAMS,
7453 Stewart Avenue, Chicago, Illinois.

DEAR MADAM: Please be advised that your claim for insurance has been denied since the evidence on file shows that the service man requested a cancellation of insurance on July 20, 1920, and no premium was deducted subsequent to this request, so there was no insurance in force at the time of his death on June 30, 1921.

You may consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended.

Respectfully,

(Signed) FRANK T. HINES,
Administrator.

Stamped, signed, and mailed November 5, 1932, Administrator's office.

And thereupon the defendant rested its case.

The defendant requested the Court to make findings of fact and conclusions of law as follows, and moved the Court to enter judgment for the defendant:

[Title omitted.]

Request of the defendant for findings of fact and conclusions of law

Now comes the defendant, The United States of America, by Michael L. Igoe, its attorney for the Northern District of Illinois, at the conclusion of all the evidence and before the entry of final
31 judgment herein, and moves the court to enter judgment in favor of the defendant and moves the court to make the following findings of fact and conclusions of law:

I

That Benson Charles Williams, the insured and the holder of the War Risk Insurance policy herein sued upon, was born August 27, 1901; that he enlisted in the United States Navy on January 13, 1919, and that the said Benson Charles Williams served continuously thereafter in the United States Navy up to and including March 25, 1921, when he, as a member of the crew of the U. S. S. "Conastoga", left San Francisco, California for Pearl Harbor, Hawaii, and that since that date the said ship, crew, and officers have been unheard of; that on July 22, 1921, the United States Navy Department declared that all officers and members of the crew, of the U. S. S. "Conastoga", including the insured, Benson Charles Williams, were officially declared dead as of June 30, 1921.

II

That on January 13, 1919, the veteran, Benson Charles Williams, applied for, and there was issued to him, a contract of War Risk Term Insurance in the principal sum of $10,000.00; that Angie Crook Williams, the plaintiff herein, was designated beneficiary under the said insurance contract, and that the said Angie Crook Williams is the mother of the insured and within the claim of beneficiary permit by the statutes of the United States.

III

That the premiums on the said contract of insurance were paid as they became due by deduction from the pay of the insured the amount of the premiums; that such deductions were made from January 13, 1919, up to and including the premium due for the month of July 1920; that no deductions were made from the pay of the insured after the month of July 1920, nor were any payments made in fact or in law on the said contract of insurance to keep it in force, and that the said contract of insurance both in fact and in law lapsed for nonpayment of premiums on August 1, 1920, plus the grace period of 31 days thereafter.

32

IV

That on July 20, 1920, the insured, Benson Charles Williams, signed and delivered to the Naval authorities of the United States, a document reading as follows:

"I hereby request that my insurance be reduced from $10,000.00 to none dollars."

V

That at the time of the death of the insured, Benson Charles Williams, the contract of War Risk Insurance sued upon was not in full but had lapsed prior thereto.

VI

That the records of the Naval Department of the Veterans' Administration do not disclose any Consent of Parents to the Enlistment of a Minor, and that no agreement was entered into by the insured and any officer or agent of the defendant to keep the said contract of insurance in force during the period of the enlistment, and that no such contract or agreement was entered into by any agent or officer of the defendant and the parents of the insured or either of them.

VII

That if any such contract or agreement was entered into, as aforesaid, as a matter of law it has no binding force or effect upon the defendant, the United States of America.

VIII

That Benson Charles Williams did not become totally and permanently disabled at a time when the said contract of insurance was in full force and effect.

IX

That the insured, said Benson Charles Williams, did not die at a time when the said contract of insurance was in full force and effect.

33

X

That on July 3, 1931, Angie Crook Williams, the plaintiff, filed her claim for insurance benefits under the said policy of insurance, which said claim alleged total and permanent disability at a time when the insurance contract was in force.

XI

That the said claim was denied by the Administrator of Veterans' Affairs of the United States Veterans' Administration on November 5, 1932.

XII

That a letter notifying the plaintiff, Angie Crook Williams, of the said denial was mailed to her last address of record at Chicago, Illinois, on November 5, 1932, from Washington, D. C.

XIII

That this lawsuit was filed November 9, 1932.

XIV

That we ask the court to find it is without jurisdiction to hear this cause or to enter judgment.

XV

That we ask the court to find that this suit is barred by the Statute of Limitations as set forth in Section 445 of Title 38, U. S. C. A., as amended.

Respectfully submitted.

MICHAEL L. IGOE,
United States Attorney.
EDMOND SULLIVAN,
Assistant U. S. Attorney.

This cause coming on to be heard on motion of the defendant, The United States of America, by Michael L. Igoe, its attorney
34 for the Northern District of Illinois, that the court enter judgment in favor of the defendant and the court make the above findings of fact and conclusions of law, the court denies and overrules the motion of the United States of America on its motion for judgment and findings of fact and conclusions of law and enters judgment for the plaintiff, Angie Crook Williams.

To such rulings and actions of the court, the defendant objects and takes an exception, which objection and exception is hereby allowed.

Enter:

PHILIP L. SULLIVAN,
United States District Court Judge for the Northern District of Illinois, Eastern Division.

And thereupon, at the close of all the evidence, the plaintiff requested the Court to make findings of fact and conclusions of law, and to enter a judgment in his favor, which request was granted by the Court, to which action of the Court in making findings of fact and conclusions of law and entering judgment for the plaintiff the defendant then and there duly excepted, which was all that occurred at the said trial.

Order settling bill of exceptions

This is to certify that the foregoing bill of exceptions tendered by the defendant is correct in every particular and is hereby settled,

signed, and sealed in open court and made a part of the record in this cause this 11 day of March 1936.

This is to certify that from time to time the term of court was properly extended herein for the purposes of settling, signing, and filing the foregoing bill of exceptions.

Philip L. Sullivan,
PHILIP L. SULLIVAN,
District Judge.

No objection.
FRANK O. WADE,
WM. J. DOYLE,
Attorneys for Plaintiff.

[File endorsement omitted.]

35 In United States District Court

Petition for appeal

Filed Oct. 16, 1935

To Honorable PHILIP L. SULLIVAN, *Judge of the United States District Court for the Northern District of Illinois, Eastern Division:*

The United States of America, your petitioner, is the defendant in the above entitled cause and prays that it may be permitted to take an appeal from the final judgment entered herein on the 11th day of October A. D. 1935, to the United States Circuit Court of Appeals in and for the Seventh Judicial Circuit, for the reasons specified in the Assignment of Errors filed herewith.

Your petitioner further prays that this appeal be allowed and that a transcript of the records, proceedings, and papers upon which such final judgment was premised, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Judicial Circuit so that the errors may be corrected and substantial justice done to the parties.

MICHAEL L. IGOE,
United States Attorney.
EDMOND SULLIVAN,
Assistant U. S. Attorney.

Notice waived.

WM J. DOYLE.

Dated: Chicago, Illinois, October 11, A. D. 1935.

36 In United States District Court

Assignment of errors

Filed Oct. 16, 1935

Now comes the defendant, The United States of America, by Michael L. Igoe, its attorney for the Northern District of Illinois,

and in connection with its petition for appeal in the above entitled cause says that in the record and the proceedings and the final judgment manifest error has intervened to the prejudice of the defendant as follows:

1

The court erred in finding as a matter of fact that the policy of War Risk insurance was in full force and effect on June 30, 1921.

2

The court erred in finding as a matter of law that the contract sued upon was in full force and effect on June 30, 1921.

3

The court erred in sustaining as a matter of law the validity of the alleged agreement between the recruiting officer and Angie Crook Williams to keep the policy of War Risk insurance in full force and effect during the period of enlistment of Benson Charles Williams, the insured.

4

The court erred in determining as a matter of law that the court had jurisdiction to hear this cause and to enter judgment against the United States of America.

5

The court erred as a matter of law in holding that this case was not barred by the limitation on suit provided for in Section 445 of Title 38, U. S. C. A., as amended.

37

6

The court erred in not finding as a matter of fact that Benson Charles Williams had cancelled his contract of War Risk insurance on July 20, 1920, and that from that date forward there was no contract of War Risk insurance in force.

7

The court erred in not finding that the policy lapsed for nonpayment of premiums on August 1, 1920, plus the grace period of 31 days thereafter.

8

The court erred in not finding as a matter of law that this suit was barred by the limitations as set forth in Section 445 of Title 38, U. S. C. A., as amended.

9

The findings of the court are contrary to the law and to the evidence.

10

The court erred in entering judgment for the plaintiff.

By Reason Whereof, the defendant prays that the judgment may be reversed, and substantial justice done to the parties.

MICHAEL L. IGOE,
United States Attorney.
EDMOND, SULLIVAN,
Assistant U. S. Attorney.
FREDERIC H. MAUGHMER,
Attorney, Department of Justice.

Notice waived.

WM. J. DOYLE.

OCTOBER 11, 1935.

38 In United States District Court

Order allowing appeal

Entered Oct. 16, 1935

This cause coming on to be heard upon the petition of The United States of America, defendant herein, for an appeal from the final judgment entered in favor of the plaintiff; and it appearing to the court that good cause is shown for an appeal to be taken; now therefore,

It Is Hereby Ordered, Adjudged And Decreed that an appeal be, and the same is, hereby allowed to The United States of America in the above entitled cause.

Enter:

PHILIP L. SULLIVAN,
Judge of the United States District Court
for the Northern District of Illinois.

Dated: Chicago, Illinois, October 11, A. D. 1935.

Notice waived.

WM. J. DOYLE.

In United States District Court

Order extending time

Entered Jan. 7, 1936

On motion of attorney for defendant, United States of America,

It Is Ordered that the time within which to settle, sign, and file Bill of Exceptions herein be and the same is hereby extended to March 3, 1936.

It Is Further Ordered that the time for filing and docketing record in the United States Circuit Court of Appeals be and the same is hereby extended to March 14, A. D. 1936.

39 In United States District Court

Entered March 3, 1936

Order Extending Time

On Motion of United States Attorney
It Is Ordered that the time within which to settle and file Bill of Exceptions be and the same is hereby extended to March 11, 1936.

In United States District Court

Stipulation as to record for appeal

Filed Feb. 14, 1936

It is stipulated by and between the parties to this cause by their respective counsel whose signatures are hereto below affixed that the following record may be prepared by the Clerk of the United States District Court for use in connection with the appeal heretofore allowed and sent to the Clerk of the United States Circuit Court of Appeals.

1. Copy of the Petition filed November 9, 1932.
2. Copy of Answer filed April 5, 1935.
3. Copy of reply filed by the plaintiff.
4. Copy of Judgment entered October 11, 1935, and findings of fact.
5. Copy of petition for appeal October 16, 1935.

40 6. Copy of Citation on Appeal.
7. Copy of assignment of errors.
8. Copy of Order allowing appeal.
8A. A copy of the Bill of Exceptions.
9. A copy of this Stipulation.

(Signed) W. J. DOYLE,
Attorney for Plaintiff.
M. L. IGOE,
Attorney for Defendant.
(EMS)

[Clerk's Certificate to foregoing transcript omitted in printing.]

41 [Citation in usual form showing service on Wm. J. Doyle, filed Oct. 16, 1935, omitted in printing.]

43 [Clerk's Certificate to foregoing transcript omitted in printing.]

44 [Caption omitted.]

45 In United States Circuit Court of Appeals for the Seventh Circuit

UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Motion to dismiss appeal

Filed April 4, 1936

Comes now the appellee in the above entitled cause, by his counsel of record, and moves that the appeal herein be dismissed, for the following reasons:

1. Section 1 of rule 13 of Rules of the United States Circuit Court of Appeals for the Seventh Circuit, requires appellant to file praecipe for transcript of the record within fifteen days after the allowance of the appeal.

The transcript shows the appeal was granted October 11, 1935 and that praecipe was not filed until February 14, 1936 (tr. P. 39), which was too late and is void.

2. Section 3 of rule 13 of Rules of the United States Circuit Court of Appeals for the Seventh Circuit, requires said transcript to be filed before the return day named in the citation, which date the transcript shows (p. 41) was within 25 days from October 14, 1935.

The transcript was filed March 13, 1936, many days after the expiration of the time allowed for the filing of the same by the rules of this court and order of said trial court.

3. The pretended extension of time by court order January 7, 1936 (tr. p. 38), was not made within the term of court in which said judgment was rendered nor within the extended time thereof.

4. The pretended extension of time by court order March 3, 1936 (tr. p. 39), was not made within the term of court in which said judgment was rendered nor within the extended time thereof.

46 5. Said appeal was granted October 14, 1935 in the October 1935 term of said court and the praecipe was not filed and the bill of exceptions was not settled and filed until long after the expiration of said October 1935 term, and said court order was therefore too late, and this court is without jurisdiction in said cause.

Wherefore, appellee prays that said appeal granted on the 11th day of October, 1935, be dismissed for want of jurisdiction.

Respectfully submitted.

FRANK O. WADE,
W. J. DOYLE,
Attorneys for Appellee.

[File endorsement omitted.]

47 In United States Circuit Court of Appeals

[Title omitted.]

Order extending time, etc

April 24, 1936

On motion of counsel for appellee, It is ordered that the time to file brief for appellee in this cause be, and the same is hereby, extended ten days from April 26th.

It is further ordered that the motion of appellee to dismiss this appeal be continued to the hearing on the merits of this cause.

On application of counsel for appellant, It is ordered that the transcript of the record herein be returned to the District Court of the United States for the Northern District if Illinois, Eastern Division, for such amendment as said court may deem proper.

Recital as to refiling of record

And afterwards, to-wit: On the twenty-fifth day of April, 1936, the transcript of record was refiled in the office of the Clerk of this court.

48 In United States Circuit Court of Appeals

[Title omitted.]

Minute entry

November 30, 1936

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Thomas E. Walsh, counsel for appellant, and by Mr. Frank O. Wade, counsel for appellee, and the court having heard the same takes this matter under advisement.

49 In United States Circuit Court of Appeals for the Seventh Circuit

No. 5812. October Term and Session, 1936

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Before EVANS, Circuit Judge, and LINDLEY and BALTZELL, District Judges

Opinion

December 9, 1936

LINDLEY, District Judge: The United States appeals from a judgment awarding war risk insurance benefits to the beneficiary in a contract of a deceased member of the Navy.

Benson Charles Williams, aged seventeen years, enlisted in the naval service January 13, 1919. On the same day he applied for and obtained a contract of war risk insurance in the principal sum of $10,000, in which appellee, his mother, was named as beneficiary. There was substantial evidence to sustain the finding of the District Court that at the time of his entry into the navy there was written across the consent of the young man's parents to his enlistment, a clause providing that such consent was given upon condition that he obtain and carry a $10,000 contract for war risk insurance in which his mother should be named as beneficiary. This consent, the court found, was executed by both parents in order to comply with the statute which provides that minors between the age of 14 and 18 shall not be enlisted for naval service without the consent of the parents or guardian. Sec. 161, title 34, U. S. C. A.

50 The premiums upon the insurance were paid by deductions from the salary or wages of the insured up to and including July 1920. Thereafter no deductions were made, for on that date the insured requested cancellation of the policy. Early in the year of 1921, he sailed as a member of the crew of the U. S. S. "Conastoga" from San Francisco, California, for the southern Pacific. The ship, its officers, and the crew have not been heard from since. As a result, the insured was declared deceased, by the Navy Department, as of June 30, 1921.

Appellant contends that because of the minor's attempted cancellation of the policy some months prior to his death, there is no liability.

The insured died before reaching majority, and the direct question involved, therefore, is as to the effect of a minor's attempted cancellation of his insurance contract, under the specific facts involved. The government was charged with notice of his age and, by the terms of the instrument signed by his parents, of the fact that their consent to his enlistment was conditioned upon the issuance and maintenance of the insurance. In the face of notice of these facts, the government approved the minor's cancellation.

Under the law quite generally, a minor is without capacity to contract or take other legal action except for necessaries. His contracts are voidable, at the option of himself or parents. He himself may ratify any such voidable act upon reaching his majority, or he or his authorized representative or person in loco parentis may assert the voidability. Reliance upon the cancellation is in the nature of an assertion of estoppel against the beneficiary because of the action of the minor during his minority, but this is "but a claim that he has assented or contracted. But he can no more do that effectively than he can make the contract alleged to be confirmed." Myers v. Hurley Motor Co., Inc., 275 U. S. 21. Assertion of estoppel by cancellation must in the very nature of things be the assertion of legal competency to perfrom legal acts such as the making of contracts; such acts may not be asserted against the minor to his prejudice. Mutual Life Insurance v. Schiavon, 71 F. (2d) 980 (C. C. A. 8).

The facts bring the question very closely to precedents where one party, having an insurable interest, obtains insurance upon another's life. Having an insurable interest and a property right in the resulting contract, such a party is protected against cancellation
51 attempted by the insured, without notice to him. So, here, the mother gave the required consent to the services of her son in behalf of the government upon the express condition that the insurance, payable to her, be maintained. Consequently, the son and the government could not, by arrangement wholly between themselves, without notice to her, set at naught the specified condition. The government could not avail itself of the minor's services, to which it was entitled only if she so agreed, and at the same time ignore the condition upon which agreement was obtained.

It follows, therefore, that the attempted cancellation of the minor was ineffective; that it was never ratified by himself after majority or by the beneficiary; that the government is charged with notice of his minority, the condition upon which his enlistment was accepted and the specified interest of his mother as beneficiary, expressly reserved in the consent to enlistment, and could not rightfully act upon the cancellation without notice to the beneficiary, but was bound, in the absence of such notice, to collect the premiums and maintain the policy by deductions from the insured's salary, as previously, and that, therefore, the insurance being in full force and effect at the time of the deceased's death, the beneficiary is entitled to recover.

It is said by appellant, however, that there is no evidence of wages due the insured from which the premiums could be deducted. Such

assertion, it seems to us, is unsound. The insured remained in the service at all times during his life time after his enlistment. He became gunner's third mate. There was accrued salary due him at the time of his death, and it may not be asserted by the government in the face of these facts that there was no proof that he was earning nothing. It is at least a rebuttable presumption that his pay continued upon the same terms as previously and in the absence of evidence rebutting such presumption, it must control.

It is said by appellant that the court is without jurisdiction, as the claim was not filed within the period required by statute. But the evidence discloses that appellee filed her claim originally in August 1921, and that the final order denying same was issued by the administrator on November 5, 1932. True it is, that previously, in 1921, the director indicated that he was relying upon the cancellation, but we do not believe that his letter to this effect can be treated as final denial of the claim, for he said, "I shall be pleased to
52 give further consideration to this claim." Presumably he was referring to the insurance claim. In the same letter he invited further correspondence relative to the claim. Thereafter at various times letters were written to Senator Lewis and Congressman Sproul with regard to the status of the case and finally, on November 5, 1932, the administrator denied the claim, adding "you may consider such denial final for the purpose of instituting suit under section 19 of the World War Veterans' Act." Thus, we take it that the claim was pending before the director from 1921 until its denial in 1932 and that under the statute, the action was brought within the period allowed by Section 445 of Title 38, U. S. C. A., as amended.

Accordingly the judgment of the District Court is Affirmed.

53 In United States Circuit Court of Appeals

5812

THE UNITED STATES OF AMERICA, APPELLANT

vs.

ANGIE CROOK WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment

December 9, 1936

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Recital as to issuance of mandate

And afterwards, to-wit: on the twelfth day of January 1937 the mandate of this court issued to the District Court of the United States for the Northern District of Illinois, Eastern Division.

54 [Clerk's Certificate to foregoing transcript omitted in printing.]

55 Supreme Court of the United States

Order allowing certiorari

Filed April 26, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File No. 41335. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 795. The United States of America, petitioner, vs. Angie Crook Williams. Petition for a writ of certiorari and exhibit thereto. Filed March 9, 1937. Term No. 795 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937